IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1957 OF 1980

The Board of Trustees of the Port of Bombay, a body corporate constituted under the provisions of the Major Port Trust Act, 1963 as amended by the provisions of the Major Port Trust Amendment Act, 1974 and having their office at Vijay Deep, Shoorji Vallabhdas Marg, Ballard Estate, Bombay-400 038. ... Plaintiff.

V/s.

1. Messrs.Kemco Shipping Corporation, a firm carrying on business at 19, Khorshed Building, Sir P.M.Road, Bombay- 400 001.

2. A.N.K.Naidu of Bombay, Indian Inhabitant, residing at 36B, Empire Estate, 3rd Floor, Warden Road, Bombay-400 026.

3. R.N.Rathi of Bombay, Indian Inhabitant, residing at Cuffe Castle, 6th Floor, Cuffe Parade Road, Bombay- 400 005.

4. D.Narendra of Bombay, Indian Inhabitant, residing at E-18, Tara Baug Estate, Charni Road, Bombay- 400 004.

5. M.Ananda of Bombay, Indian Inhabitant, C/o Messrs. Ocean Carriers Pvt.Ltd., 301, Navrattan, 69, P.D'Mello Road, Carnac Bunder Junction, Bombay-

400 009.

6. The Scindia Steam Navigation on Company Limited, a company incorporated under the Companies Act, having its registered office at Scindia House, Narottam Morarjee Marg, Ballard Estate, Bombay- 400 038. ... Defendants.

U.J.Makhija with Parag Khandar i/b. Mulla & Mulla & C.B.C.for the plaintiff.

None for the defendants.

CORAM: V.C.DAGA, J.

DATED: 21st November 2007.

JUDGMENT :

. This suit is filed by the plaintiff to recover warehouse rental charges in respect of goods imported by the defendants and stored in the plaintiff's warehouse in Mumbai. The charges which are being recovered are as per Dock's scale of rates duly prescribed, published and brought into force under the provisions of the Major Port Trusts Act, 1963 ("Act" for short) and the bye-laws framed thereunder.

2. The factual matrix reveals that the defendant No.1 imported a consignment of 780 packages containing decorative items which were manifested at Item No.T.P.1 of the Import General Manifest No.1845 dated 8th December, 1976 of s.s. 'JALA MANI'. The said consignment was landed on the Docks at Bombay and lying at 'B' Warehouse, Indira Dock. Defendant No.1 is the importer whereas defendant No.6 is the bailor in respect of the suit consignment having discharged the same into the custody of the plaintiff. Defendant Nos.2 to 5 are the partners of defendant No.1 firm. As such, according to the plaintiff, the importer and/or bailor were bound and liable to take delivery of the consignment after making payment of charges of the plaintiff. The defendants failed and neglected to take delivery of and remove from the docks the said consignment within seven days from the date of landing thereof as provided under the Act. As such the suit consignment remained in the Docks at the sole risk and expenses of the defendants.

3. As the suit consignment was not cleared for over two months from the date of its landing, plaintiff by its letter 22nd June, 1977 informed defendant Nos.1 and 6 that the said consignment was

lying uncleared in the warehouse and further pointed out to them that if the said consignment was not cleared within 10 days from the receipt of letter on payment of accrued charges, the same would be sold in a public auction. By letter dated 15th April, 1977, defendant No.1 informed the plaintiff that they are neither the consignees nor the importers of the said goods and ownership of the goods was vested in M/s.Seawise Agency Ltd., Hongkong. By further letter dated 28th June, 1977, defendant No.1 informed the plaintiff that the suit consignment belonged to M/s.Seawise Agency Ltd., Hongkong and defendant No.1 was not the owner of the said consignment. It was further informed by defendant No.1 that they could not effect the transshipment of the said goods as M/s.Seawise Agency Ltd. did not remit sufficient funds to them. The defendant No.6 failed and neglected to reply the aforesaid letter of the plaintiff.

4. Out of 780 packages, plaintiff sold 488 packages in 10 lots in a public auction after publishing the list in the newspaper "Free Press Journal" in the issue of 11th July, 1977 and realised Rs.5,89,200/-. Particulars of sale of the aforesaid 488 packages in 10 lots are as follows:

Sr. No.	Sale held on	Lot No.	No. of packages sold.	Price Realised.
1.	27.07.1977	K/2953(A-E, J-N, X & Y)	258	Rs.3,84,500/-
2.	09.08.1977	K/2953 (F)	35	Rs. 23,500/-
3.	09.08.1977	K/2953 (O)	73	Rs. 60,000/-
4.	09.08.1977	K/2953 (Q)	3	Rs. 10,200/-
5.	09.08.1977	K/2953 (G)	9	Rs. 15,500/-
6.	29.08.1977	K/2953 (P)	24	Rs. 22,500/-
7.	29.08.1977	K/2953 (H)	28	Rs. 49,100/-
8.	30.08.1977	K/2953 (Z)	30	Rs. 11,500/-
9.	28.11.1977	K/2953 (I)	10	Rs. 8,000/-
10.	28.11.1977	K/2953 (W)	18	Rs. 5,000/-
			488	Rs.5,89,200/-

Accordingly, plaintiff sold 488 packages in 10 different lots one by one.

5. The plaintiff sold first lot of 258 packages by a public auction held on 27th July, 1977 and realised Rs.3,84,500/-. According to the plaintiff,

the sale of first lot resulted in deficit of Rs.1,88,512.69. Port trust charges on the first lot were Rs.1,45,114.25, whereas customs duty thereon amounted to Rs.2,05,649.58, I.T.C. Fine amounted to Rs.1,37,446/- and expenses of sale amounted to Rs.84,802.86.

6. The plaintiff vide their letter dated 9th January, 1978 informed the said shipper M/s.Seawise Agency Ltd. that they disposed of first lot by public auction for Rs.3,84,500/- on 27th July, 1977 and requested them to forward bill of lading, bill of entry, invoices etc. The said letter was returned undelivered by the postal authorities. The plaintiff again informed M/s.Seawise Agency Ltd. and called upon them to remit Rs.1,87,813.19. This letter was also returned undelivered.

7. By letters dated 28th May, 1979 and 4th July, 1979, plaintiff informed defendant No.6 about disposal of first lot with statement of charges and called upon them to pay provisional deficit of Rs.1,87,813.19 under section 131 of the Act. Again vide letter dated 13th November, 1979 defendant No.6 was called upon to pay the sum of Rs.1,88,512.69. A copy of this letter was also sent to defendant No.1.

8. By letter dated 26th/27th November, 1979, defendant No.6 informed plaintiff that defendant No.1 is the consignee of the suit consignment and enclosed photostat copy of the bill of lading in respect of the suit consignment. It was also stated that freight charges were paid by defendant No.1. Again vide letter dated 22nd April, 1980 plaintiff called upon defendant No.6 to remit the amount of deficit in sale. Defendant No.6 failed and neglected to pay the said deficit amount.

9. By letter dated 21st December, 1979 plaintiff informed defendant No.1 that they have learnt from defendant No.6 that defendant No.1 is the consignee in respect of subject consignment of 780 packages and called upon them to remit the deficit amount of Rs.1,88,512.69 arising out of sale of first lot. A demand notice was also sent along with the said letter. The said letter was returned undelivered by the postal authorities. Again by letter dated 2nd February, 1980 defendant No.1 was called upon to remit the deficit amount. However, the said letter was also returned undelivered by the postal authorities.

10. Since defendant No.1 has closed down its business, plaintiff vide letter dated 25th March, 1980 informed defendant Nos.2, 3, 4 and 5 that they are liable to pay the deficit amount and, accordingly, called upon them to pay the same.

11. Vide letter dated 29th April, 1980, written by defendant No.1 to the plaintiff, defendant No.1 denied their liability in respect of suit consignment. Defendant No.5 also by its letter dated 3rd May, 1980 denied his liability. By letter dated 14th May, 1980, second defendant denied his liability to pay the deficit in sale amount. Further by letter dated 16th May, 1980, defendant Nos.3 to 5 denied their liability to pay the deficit amount though they intimated the address of the foreign supplier.

12. Accordingly, the plaintiff sold remaining 9 lots of packages. The sale proceeds received were adjusted against the port-trust charges, expenses of sale and customs duty, the details of which are given in the plaint. After adjusting the sale price, since there was deficit, plaintiff informed the defendants and called upon them to remit the deficit amount in the sale of packages.

13. The plaintiff has contended that the defendants are liable to pay to the plaintiff sum of Rs.1,04,203.46 being the deficit in the sale of first lot; Rs.16,362.98 being deficit in the sale second lot; Rs.38,071.17 being deficit the sale of third lot; Rs.1,310.29 being deficit in the sale fourth lot; Rs.4,078.38 being deficit in the sale fifth lot; Rs.3,943.22 being deficit in the sale sixth lot; Rs.14,105.74 being deficit in the sale seventh lot; Rs.3,272.08 being deficit in the sale eighth lot; Rs.3,064.37 being deficit in the sale ninth lot; Rs.1,600.58 being deficit in the sale tenth lot aggregating to Rs.1,90,012.27. The plaintiff has also contended that the defendants are bound to pay interest on the said amount of deficit of Rs.1,90,012.27 at the rate of 12% per annum from the date of the suit till payment. Since the defendants failed and neglected to pay the said amount of deficit in spite of repeated demands, plaintiff has filed present suit for recovery of the said amount with interest.

14. On being summoned, the defendants appeared and filed their respective written statements denying their liability in respect of the suit

consignment. The defendants contended that they were never the owners or importers or consignee of the subject goods nor they had any interest in the said goods. According to them, the plaintiff is not entitled to make any claim or demand against them. As such they prayed that the suit against the defendants is liable to be dismissed.

Issues for Determination :

15. After considering the rival pleadings, issues were framed vide order dated 10th April, 2001. Learned counsel for the plaintiff submits that issue No.8 needs to be modified. He submits that the burden to prove issue No.8 is on defendant No.6 and not all defendants. Accordingly issue No.8 is modified. The issues framed including the modified issue No.8 read as under:

ISSUES	FINDINGS
(1) Whether these defendants prove that the suit is liable to be dismissed for want of cause of action as alleged in paragraph 1 of their written statement?	No.
(2) Whether these defendants prove that the suit is liable to be dismissed for non-joinder of necessary party as alleged in paragraph 2 of their written	No.

statement?

(3) Whether these defendants prove that the suit is barred by limitation as alleged in paragraph 3 of their written statement?	No.
(4) Whether the plaintiffs prove that they are entitled to levy wharfage, demurrage and other charges for the goods landed and stored by them as alleged in paragraph 3 of the plaint?	Yes.
(5) Whether the plaintiffs prove that 780 packages had landed in or about December 1976 as alleged in paragraph 4 of the plaint?	Yes.
(6) Whether the plaintiffs prove that the defendants as owners were bound and liable to take delivery of the said consignment as alleged in paragraph 6 of the plaint?	Yes.
(7) Whether the plaintiffs prove that these defendants were liable to clear the said consignment and/or to pay the accrued charges as alleged in paragraph 7 of the plaint?	Yes.
(8) Whether defendant No.6 proves that the defendant Nos.1 to 5 failed and neglected to collect delivery order for the purpose of taking delivery of the said consignment as alleged in paragraph 8 of their written statement and hence defendant No.6 is not liable to pay suit claim?	No.
(9) Whether the plaintiffs prove that proper notice was given before the alleged sale of the said consignment as alleged in paragraph 8 of the plaint?	Yes.
(10) Whether the plaintiffs	Only 488 pack-

prove that the suit consignment was sold in 10 different lots as alleged in paragraphs 8, 9, 14, 20, 30, 35, 40, 45, 50, 55 of the plaint?	ages out of 780 packages were sold in 10 lots.
(11) Whether the plaintiffs prove that the aforesaid sale resulted in deficit as alleged in the aforesaid paragraphs of the plaint?	Yes.
(12) Whether the plaintiffs prove that these defendants are bound and liable to pay the said deficit as alleged in the aforesaid paragraphs of the plaint?	Yes.
(13) Whether the plaintiffs prove that these defendants are bound and liable to pay Rs.1,94,203.46 as alleged in paragraph 58 of the plaint?	Yes.
(14) Whether the plaintiffs prove that they are entitled to recover interest at the rate of 12 per cent per annum from these defendants as alleged in paragraph 58 of the plaint?	Plaintiffs are entitled to interest @ 10% p.a.

15. The plaintiffs have filed affidavit in lieu of oral evidence duly affirmed by Shri Sanjeev Kumar, the Assistant Docks Manager, the authorised signatory of the plaintiff and have produced documents in support of the suit claim. He also entered in witness box and reiterated and adopted the contents of the affidavit as part of his oral evidence. All these documents were proved through

affidavit filed in lieu of evidence. Nobody appeared on behalf of the defendants to cross-examine the affiant or to challenge the legality or validity of the documents. Under these circumstances, for want of any challenge and since the defendants have ex parte, the plaintiff would be entitled to decree of the suit claim.

16. In the above view of the matter, suit filed by the plaintiff deserves to be decreed in toto with slight modification of rate of future interest on the decretal amount which has to be at the prevailing rate of bank interest. Hence the following order:

ORDER

(i) The suit is decreed in terms of the prayer clauses incorporated in the plaint.

(ii) The defendants do pay Rs.1,90,012.27, with interest on the decretal amount i.e. suit claim calculated thereon from the date of suit till payment or part payment thereof at the rate of 10%

per annum with costs.

(iii) Decree be drawn in terms of this order.

(V.C.DAGA, J.)